United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: November 8, 2002

TO : Rochelle Kentov, Regional Director
Margaret Diaz, Regional Attorney
Karen K. LaMartin, Assistant to Regional Director
Region 12

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Johnson Controls - HILL, L.L.C. 512-5030-0100
Case 12-CA-21393 512-5030-0175
512-5030-4000
512-5030-4020

This 8(a)(1) case was submitted for advice as to whether the Employer unlawfully requested employees to complete and return an "Employment Data Survey" that asked employees to, among other things, identify "the name of the Union and local to which [they] belong." We conclude that the Employer's survey was unlawful.

FACTS

Johnson Controls - Hill, LLC is the contractor for base services at U.S. Naval Air Stations in Jacksonville and Mayport, Florida. Approximately half the Jacksonville and Mayport employees are represented by a union. The Employer's maintenance, service, and plant operations employees at those locations are represented by International Brotherhood of Electrical Workers, Local No. 177. Local 177 and the Employer are signatories to a contract, effective by its terms through June 30, 2003. There are no ongoing organizing campaigns at either base.

In October 2001, approximately one year after taking over as the base contractor, the Employer, by Human Resources Information Systems Manager Janis Sims, sent all its Jacksonville and Mayport employees a 32-point Employment Data Survey under a separate cover letter. Sims's cover letter stated that the survey is the employees' "opportunity to review and update information related to [their] employment that is captured in the company's Human Resource Information System (HRIS)." Sims's letter stated that the information "[was] necessary in order to comply with standard business needs," and directed employees to review and correct the "important employment-related data" maintained in the HRIS, as

reflected on the enclosed form; sign and date the survey; and return it to Sims as soon as possible.

In addition to soliciting information regarding employees' names, addresses, social security numbers, education, ethnicity, disability, and military status, the survey asked employees to identify "the name of the union and local to which [they] belong."

Neither Sims's cover letter nor the survey gave assurances that employees would be immune from reprisal for either providing or withholding certain information, or for failing to timely return the completed survey.

The Employer argues that the requested information is necessary for the Employer to verify represented employees' dues check-off authorizations and benefit fund contributions.

ACTION

We agree with the Region that the Employer has violated the Act by requiring employees to submit information regarding their union membership, for no legitimate purpose and without providing employees assurances they would not suffer reprisals for providing that information or for refusing to answer questions regarding their union activities.

In evaluating whether an employer has unlawfully questioned its employees regarding their union activities and sympathies, the Board applies a totality of the circumstances test set forth in Rossmore House[1] and its progeny. Under that test, the Board considers the nature of the information sought, the identity of the questioner, the place and method of interrogation, and other relevant employer actions around the time of the interrogation, to determine whether the questioning reasonably tended to restrain, coerce, or interfere with rights guaranteed by the Act.[2] The Board will also consider whether the employer

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[1] 269 NLRB 1176, 1177-1178 (1984) affd. sub nom. HERE, Local 11 v. NLRB, 760 F2d. 1006 (9th Cir. 1985). In Rossmore House, the Board rejected the "per se rule" articulated in PPG Industries, 251 NLRB 1146 (1980), that questions concerning union sympathies are inherently coercive. See also Hancock, Inc., 337 NLRB No. 183, slip op. at 1 (2002).

[2] Rossmore House, 269 NLRB at 1178 fn. 20; Bourne v. NLRB, 332 F.2d 47, 48 (2d Cir. 1964).

had any lawful purpose for conducting its interrogation,[3] or provided employees with adequate assurances against reprisals.[4] Although "strict evaluation of each factor" is not required, these "useful indicia ... serve as a starting point for assessing the totality of the circumstance[s]."[5]

Applying the above criteria to this case, we conclude that the Employer's "Employment Data Survey" constituted unlawful interrogation of its employees.

First, the information sought by the Employer was directly related to employees' exercise of their Section 7 rights. The survey did not ask whether employees were represented by a union, but whether they were members of a particular union.[6] To be employed in a represented unit, an employee need not exercise Section 7 rights. Membership in a union, however, involves the exercise of a Section 7 right; by its survey, the Employer required its employees to divulge that they have exercised their right to join a union.[7]

With regard to the identity of the questioner, Sims is a Human Resources manager charged by the Employer with compiling, reviewing, and sharing employee data; that authority was explicitly conveyed to all employees through Sims's cover letter. Thus, employees could reasonably assume that Sims acted at the direction of the Employer's highest management and, therefore, had the authority to require employees to divulge their union status.[8]

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[3] Rossmore House, 269 NLRB at 1177; Sunnyvale Medical Center, 277 NLRB at 1218; DEMCO, 337 NLRB No. 135, slip op. (2002).

[4] Dealer's Mfg. Co., 320 NLRB 947, 948 (1996).

[5] Hancock, above, 337 NLRB No. 183, slip op. at 1, citing Perdue Farms, Inc. v. NLRB, 144 F.3d 830, 835 (D.C. Cir. 1998) (internal quotations omitted).

[6] Burlington Weaving Mills, 34 NLRB 187, 191 (1941).

[7] See, e.g., Richard Mellow Electrical Contractors Corp., 327 NLRB 1112, 1113 (1999),(employer unlawfully required applicants to state whether they were "currently affiliated with any local unions").

[8] See, e.g., Dlubak Corp., 307 NLRB 1138, 1146 (1992) enfd. 5 F.3d 1488 (3rd Cir. 1993) noting significance of interrogation by high level management official.

With regard to the method of interrogation, although the survey did not involve the kind of face to face confrontation generally thought of as coercive, it had other coercive elements. Thus, the Employer indicated that employees were required to provide this information and that it would be kept in a permanent database to which other managers would have access. This would be particularly troubling to unrepresented employees involved in, or considering involvement in, union activities. For both represented and unrepresented employees, the Employer's explicit intention to record and store this information would lead employees to reasonably believe their union activities were under surveillance. Under these circumstances, we conclude that the method of interrogation could restrain or coerce employees in their exercise of Section 7 rights.[9]

Finally, we are unable to discern any legitimate purpose behind the Employer's inquiries regarding employees' union membership. The Employer claims the information is necessary to ensure that employees' dues obligations are met and necessary benefit fund contributions are made. Information regarding an employee's union status, however, would do nothing to aid the Employer in this regard; an employee's membership status is irrelevant in determining whether an employee has submitted a dues authorization check-off or is entitled to contractual benefits.[10] The Employer can determine the former by reviewing submitted check-off authorizations and

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[9] See, e.g., SAIA Motor Freight, Inc., 334 NLRB No. 124, slip op. at 2 (2001)(unlawful interrogation where employer asked employees about their union activities and there was no evidence that employees had previously disclosed their union sympathies); Dealers Mfg. Co., above, 320 NLRB at 948 (employer unlawfully asked an employee what she thought of the union; interrogation by high-level company official was without legitimate purpose and occurred without assurances against reprisals). See also, Whitewood Oriental Maintenance Co., 292 NLRB 1159, 1164 (1989) enfd. sub nom. Texas World Service Co. v. NLRB, 928 F.2d 1426 (5th Cir. 1991)(unlawful for employer to ask employees whether they supported the union by signing an authorization card).

[10] Flying Dutchman Park, Inc., 329 NLRB 414, fn. 3, 422 (1999)("The execution of a dues check-off authorization must be voluntary"), citing Air La Carte, 284 NLRB 471 (1987); IATSE Local 219, AFL-CIO (Hughes-Avicom), 322 NLRB 1064, 1065 (1997)(requirement that employees had to be union members in order to qualify for employer contributions to pension fund unlawful).

can determine the latter by using the job code/title and facility information provided to ascertain whether the employee is in a represented unit.

Under all these circumstances,[11] we conclude that the Employer has unlawfully interrogated employees, and that the Region should issue complaint, absent settlement.

B.J.K.

[11] We would not rely on the other alleged ULP's as evidence that the Employer unlawfully interrogated its employees since there is no connection between that Employer conduct and the survey. See, e.g., Hancock, above, slip op. at 2 (2002).